

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JOSEPH DIFLUMERA

Criminal No. 04-40002-NMG

INITIAL SCHEDULING ORDER
November 29, 2004

SWARTWOOD, M.J.

The above named defendant having been arraigned before this court on Friday, November 19, 2004, and having reserved decision as to whether to proceed under the automatic discovery rules, IT IS HEREBY ORDERED in accordance with Local Rules (LR) 116.1 through 116.5 that:

I. The defendant(s) shall, on or before the close of business, Friday, December 3, 2004, file a Notice Re: Automatic Disclosure.¹

II. In the event that the defendant, in the Notice Re: Automatic Disclosure, referred to above, states that no waiver will be filed,² further proceedings shall be governed by the following subsections **A** through **H**:

A. The government shall produce, on or before Friday, December 31, 2004, or within fourteen (14) days of receipt by the government of a written statement that no

¹ A blank Notice Re: Automatic Disclosure is attached to this Order.

² In the event that the defendant does not file the Notice Re: Automatic Disclosure within fourteen days of arraignment, it shall be deemed that the defendant will proceed under the automatic discovery provisions in accordance with LR 116.1(C).

Waiver will be filed, **whichever shall first occur**, those materials required to be produced under LR 116.1(C).

- B. The defendant shall produce, on or before Friday, December 31, 2004, those materials required to be produced under LR 116.1(D).
- C. Any discovery request letters shall be sent and filed by Friday, December 31, 2004. See LR 116.3(A) and (H).
- D. Any responses to discovery request letters shall be sent and filed within fourteen (14) days of receipt of the discovery request letter(s) referred to in Paragraph A immediately above, or on or before Friday, January 14, 2005, **whichever date shall first occur**. See LR 116.3(A).
- E. Any and all discovery motions shall, consistent with the provisions of LR 116.3(E) through 116.3(H), be filed on or before 14 days after receipt of the opposing party's declination to provide the requested discovery, **or** 14 days after the opposing party has received the discovery request letter and has failed to respond thereto, **whichever date shall first occur**. See LR 116.3(E) and (H).
- F. Response(s) to any motions shall be filed on or before fourteen (14) days after motions have been filed consistent with the provisions of Paragraph C immediately above. See LR 116.3(I).
- G. In the event that a defendant notifies the attorney for the government that the defendant intends to offer a plea of guilty, the attorney for the government shall forthwith notify this court of that fact by writing indicating the date that that notification was made to the attorney for the government.
- H. **Unless counsel inform the Court in a Joint Memorandum in accordance with LR 116.5(C) on or before Monday, December 27, 2004 that there is no need for**

an initial status conference, such a conference will be held on Thursday, December 30, 2004, at 10:00 a.m., in Courtroom No. 1 on the Fifth Floor, United States District Court, Worcester, MA. If the Joint Memorandum is not filed with the Court on or before Monday, December 27, 2004, then the parties must appear for the initial status conference either in person or by telephone.³

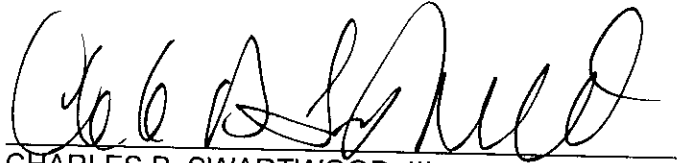
- I. If counsel feel that there is need for an initial status conference, then on or before the close of business on Monday, December 27, 2004 counsel shall inform my Courtroom Clerk as to whether they want the status conference to be conducted in person or by telephone .
- III. In the event that the defendant, in the Notice Re: Automatic Disclosure, referred to above, waives the automatic disclosure of discovery material, further proceedings shall be governed by the following subsections **A** through **G**:
 - A. The parties shall comply with the Criminal Pretrial Order attached hereto which shall be deemed in full force and effect on the date that the defendant files a Waiver.
 - B. Any discovery request letters shall be sent and filed by Friday, December 31, 2004. See LR 116.3(A) and (H). The discovery request letter(s) shall **not** seek information already ordered to be provided by the terms of the Criminal Pretrial Order referred to in Paragraph A immediately above.
 - C. Any responses to discovery request letters shall be sent and filed within fourteen (14) days of receipt of the discovery request letter(s) referred to in Paragraph A immediately above, or on or before Friday, January 14, 2005, **whichever date shall first occur**. See LR 116.3(A).

³ Defendants are not required to be present at the Initial Status Conference. Inasmuch as this court concludes that the Initial Status Conference is not a critical proceeding within the meaning of Rule 43, F.R. Crim. P., defendants in custody will **not** be transported to court for the Initial Status Conference absent a showing of exceptional cause on motion duly filed in advance of the Initial Status Conference, See 43(c)(3), F.R. Crim. P.

- D. Any and all discovery motions shall, consistent with the provisions of LR 116.3(E) through 116.3(H), be filed on or before 14 days after receipt of the opposing party's declination to provide the requested discovery, **or 14 days after the opposing party has received the discovery request letter and has failed to respond thereto, whichever date shall first occur.** See LR 116.3(E) and (H). **No** discovery motion shall be filed seeking those materials already ordered to be provided by the terms of the Criminal Pretrial Order referred to in Paragraph A above. In the event that the moving party files a motion or motions seeking those materials already ordered to be provided by the terms of the Criminal Pretrial Order referred to in Paragraph A above, this court will order those motions stricken from the record.
- E. Response(s) to any motions shall be filed on or before fourteen (14) days after motions have been filed consistent with the provisions of Paragraph C immediately above. See LR 116.3(I).
- F. In the event that a defendant notifies the attorney for the government that the defendant intends to offer a plea of guilty, the attorney for the government shall forthwith notify this court of that fact by writing indicating the date that that notification was made to the attorney for the government.
- G. **Unless counsel inform the Court in a Joint Memorandum in accordance with LR 116.5(C) on or before Monday, December 27, 2004 that there is no need for an initial status conference, such a conference will be held on Thursday, December 30, 2004, at 10:00 a.m., in Courtroom No. 1 on the Fifth Floor, United States District Court, Worcester, MA. If the Joint Memorandum is not**

filed with the Court on or before Monday, December 27, 2004, then the parties must appear for the initial status conference either in person or by telephone.⁴

- H. If counsel feel that there is need for an initial status conference, then on or before the close of business on Monday, December 27, 2004 counsel shall inform my Courtroom Clerk as to whether they want the status conference to be conducted in person or by telephone .

A handwritten signature in black ink, appearing to read 'Charles B. Swartwood, III', written over a horizontal line.

CHARLES B. SWARTWOOD, III
UNITED STATES MAGISTRATE JUDGE

⁴ Defendants are not required to be present at the Initial Status Conference. Inasmuch as this court concludes that the Initial Status Conference is not a critical proceeding within the meaning of Rule 43, F.R. Crim. P., defendants in custody will **not** be transported to court for the Initial Status Conference absent a showing of exceptional cause on motion duly filed in advance of the Initial Status Conference, See 43(c)(3), F.R. Crim. P.

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NOTICE RE: AUTOMATIC DISCLOSURE

In accordance with Local Rule (LR) 116.1 the defendant, _____

☐

states that no waiver will be filed and requests that the government provide automatic discovery in accordance with LR 116.1(C).

☐

waives the automatic disclosure of discovery material pursuant to Local Rule 116.1 (B). Discovery will be obtained directly through the provisions of the Federal Rules of Criminal Procedure in the manner provided under Local Rule 116.3.

Defendant

Attorney for the Defendant

Date